

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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BRIAN P. LANE, Individually and,  
on behalf of all others similarly situated

Plaintiff,

v.

THE UNITED STATES

Defendant.

Case No. 3:19-cv-01492-X  
Judge Brantley Starr

**JOINT MOTION TO STAY PROCEEDINGS**

Pursuant to Rule 7.1 of the Local Civil Rules, the Parties respectfully request that the Court stay proceedings in this matter pending a decision by the Federal Circuit in two cases raising closely related legal and factual issues. The Parties conferred on this matter by email and by telephone on February 3, 2021.

“When related cases are pending in two federal courts, there is an inherent power in each of those courts, when presented with an appropriate motion, to stay the proceedings before it in deference to the related action.” *Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc.*, 341 F. Supp. 2d 639, 642 (N.D. Tex. 2004); *see also West Gulf Maritime Association v. ILA Deep Sea Local 24*, 751 F.2d 721, 728–29 (5th Cir. 1985). That authority is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Staying proceedings in this Court pending the outcome of the appeals in cases that raise closely related legal issues will promote judicial economy and eliminate potentially unnecessary and expensive parallel proceedings in this Court.

Two recently argued cases in the Federal Circuit raise issues that substantially overlap with the issues raised in this litigation. In *The Modern Sportsman, LLC v. United States*, No. 20-1107 (Fed. Cir., *argued* Dec. 8, 2020), and *McCutchen v. United States*, No. 20-1107 (Fed. Cir., *argued* Dec. 8, 2020), the Federal Circuit will decide substantially the same issues that are presented in this litigation.<sup>1</sup> Among the issues the Federal Circuit is called to decide in those appeals are (1) whether the Final Rule is not a taking based upon the “police power” doctrine; and (2) whether the Final Rule constitutes a taking under any *per se* test. Especially because any appeal in this case will be heard by the Federal Circuit, *see* 28 U.S.C. § 1295(a)(2), the Federal Circuit’s disposition of these issues will likely have a significant impact on the ultimate resolution of this case. To avoid potentially needless effort by the Court and the litigants, the Parties respectfully request that the Court stay the proceedings in this litigation pending a decision by the Federal Circuit in *Modern Sportsman* and *McCutchen*.

Dated: February 4, 2021

Respectfully submitted,

/s/ Adam M. Riley (with permission)

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<sup>1</sup> Counsel for Plaintiff is also counsel to the appellants in these two cases.

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Certificate of Conference

This is to certify that the parties have conferred about the relief requested herein and are in agreement about it, and therefore this motion is presented as a joint motion.

/s/ Michael F. Knapp  
Michael F. Knapp

Certificate of Service

On February 4, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Michael F. Knapp  
Michael F. Knapp